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14
15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION – LOS ANGELES**

15 TRADER JOE'S COMPANY, a
16 California corporation,

17 Plaintiff,

18 v.

19 T-SHIRT AT FASHION LLC, entity
20 of unknown jurisdiction, and DOES
21 1-5,

22 Defendant.

Case No. 2:23-cv-03010-MWF-RAO

**PLAINTIFF TRADER JOE'S
RESPONSE TO ORDER TO SHOW
CAUSE AND NOTICE OF
EX PARTE MOTION FOR
PERMISSION TO EFFECT
SERVICE OF PROCESS BY
ALTERNATIVE MEANS AND
EXTENSION OF TIME TO SERVE
DEFENDANT T-SHIRT AT
FASHION LLC, AND
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: July 24, 2023

Time: 10:00 a.m.

Judge: Hon. Michael W. Fitzgerald

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that pursuant to Civ. L.R. 7-19, Plaintiff Trader
3 Joe's Company ("Trader Joe's") hereby responds to the Court's July 7, 2023, Order
4 to Show Cause (Dkt. 11) and moves *ex parte* for permission to serve the summons
5 and Complaint on Defendant T-shirt AT Fashion LLC ("Defendant") by alternative
6 means as authorized by Fed. R. Civ. P. 4(f)(3). The matter is being presented before
7 United States District Judge Michael W. Fitzgerald in Courtroom 5A, located at
8 First Street Courthouse, 350 West First Street, Los Angeles, California 90012.
9 Trader Joe's is available for a hearing if the Court prefers oral argument on this
10 motion.

11 Trader Joe's requests permission to effect service on Defendant by email to
12 support@t-shirtat.com, which is Defendant's known corporate and legal email
13 address. Trader Joe's also requests a reasonable extension of the deadline to
14 complete such service. This motion is based upon this Notice of Motion and
15 Motion, the attached Memorandum of Points and Authorities, the Declarations of
16 David R. Eberhart, Margo Evashevski, and Taylor Lastor and the Exhibits attached
17 thereto, the Court's files in this action, the arguments of counsel, and any other
18 matter the Court may properly consider.

1 Dated: July 13, 2023

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I. INTRODUCTION

Trader Joe's respectfully seeks an order permitting alternative service of the summons and Complaint on Defendant by email, because: (1) Trader Joe's has exhausted substantial resources investigating and attempting service by conventional means on Defendant, without success; (2) Defendant intentionally falsified its address and those of its affiliate companies to thwart service by conventional means; and (3) Trader Joe's and Defendant have already communicated by email, rendering email the most reasonably calculated means to provide notice of the suit to Defendant.

Trader Joe's inability to serve Defendant, despite diligent efforts to effect service, is materially impeding the progress of this litigation and causing ongoing harm to Trader Joe's. Thus, pursuant to Fed. R. Civ. P. 4(f)(3), Trader Joe's respectfully requests authorization from the Court to serve the summons and Complaint on Defendant by email to support@t-shirtat.com, which is Defendant's known and valid email address. Trader Joe's also requests a reasonable extension of the deadline to complete such service. The facts of this case constitute good cause as to why this action should not be dismissed for lack of prosecution, and warrant an exercise of such authority.

II. STATEMENT OF FACTS

A. Defendant and Its Aliases

Defendant operates its primary website at [<https://t-shirtat.com>](https://t-shirtat.com) (the "Website"). Dkt. 1 ¶ 3; Declaration of David R. Eberhart ("Eberhart Decl.") ¶ 3, Exhibit ("Ex.") A. On the Website, Defendant markets T-shirts and other apparel for sale and delivery to consumers throughout the United States and abroad. Dkt. 1 ¶¶ 3, 25-27; Eberhart Decl. ¶ 4, Ex. A. On the Website, Defendant sells numerous products that display Trader Joe's registered trademarks, including the TRADER JOE'S word mark, stylized word mark, and logo. Dkt. 1 ¶¶ 26-28; Eberhart Decl. ¶ 5, Ex. B.

Defendant also operates multiple alias websites (“Alias Websites”). Dkt. 1 ¶ 3, Ex. A; Eberhart Decl. ¶ 6. Defendant’s Alias Websites have a substantially identical look and feel as the Website, and those websites also contain webpages displaying substantially identical products, product descriptions, privacy policies, terms of service, Digital Millennium Copyright Act (“DMCA”) policies, and alleged contact information as on the Website. Eberhart Decl. ¶ 7, Ex. C. Defendant also sells numerous products that display Trader Joe’s registered trademarks on the Alias Websites. *Id.* ¶ 8, Ex. D.

B. Defendant Directs Most Correspondence to a Single Email Address Only

Defendant directs almost all correspondence to a single email account. Where Defendant lists a physical address, that address is not actually associated with Defendant, as discussed below. The following are Defendant’s representations regarding contact methods:

- Each webpage on the Website displays a banner of purported information about Defendant. Eberhart Decl. ¶ 9, Ex. A. This banner contains a list titled “Store Information.” *Id.* Under “Store Information,” Defendant lists a contact email address at support@t-shirtat.com, and a physical contact address at 909 County Rd 2216, Cleveland, Texas 77327.
- The Website also contains a “Contact” webpage. Eberhart Decl. ¶ 10, Ex. E. The “Contact” webpage does not identify a physical or mailing contact address for Defendant. Eberhart Decl., Ex. E. Rather, it directs consumers to contact Defendant by email at support@t-shirtat.com.
- The Website also contains a “DMCA” webpage, which contains Defendant’s purported policy for addressing copyright infringement and takedown requests pursuant to the DMCA. Eberhart Decl. ¶ 11, Ex. F. This webpage also identifies the purported contact information

for Defendant’s designated agent for DMCA complaints. Eberhart Decl., Ex. F. It does not list a physical or mailing address. *Id.* Rather, it directs consumers to contact Defendant’s designated DMCA agent by email at support@t-shirtat.com. *Id.*

- The Website also contains a “Terms of Service” webpage, which contains Defendant’s purported terms and conditions for using the Website. Eberhart Decl. ¶ 12, Ex. G. This webpage identifies the contact information for consumers to submit legal correspondence to Defendant regarding its terms of service. Eberhart Decl., Ex. G. It does not list a physical or mailing address. *Id.* Rather, it directs consumers to submit such legal inquiries by email at support@t-shirtat.com. *Id.*
- The Website also contains a “Privacy Statement” webpage, which contains Defendant’s purported privacy policy. Eberhart Decl. ¶ 13, Ex. H. This webpage identifies the contact information for consumers to submit legal inquiries to Defendant’s “Privacy Compliance Officer.” Eberhart Decl., Ex. H. It does not list a physical or mailing address. *Id.* Rather, it directs consumers to contact Defendant’s “Privacy Compliance Officer” by email at support@t-shirtat.com. *Id.* Specifically, it informs consumers: “If you would like to: . . . register a complaint . . . do not hesitate to contact our Privacy Compliance Officer at support@t-shirtat.com.” *Id.*

C. Trader Joe’s Presuit Investigation and Attempts to Address Defendant’s Trademark Infringement

On March 18, 2021, Trader Joe’s sent a cease and desist letter to Defendant via email at support@t-shirtat.com, demanding that Defendant stop infringing Trader Joe’s intellectual property. Eberhart Decl. ¶ 14, Ex. I. Defendant never responded to this demand; however, the email from Trader Joe’s did not result in a

1 bounce-back message or other indication that it had not been delivered. *Id.*

2 On September 21, 2021, Trader Joe's sent another cease and desist letter to
3 Defendant via email at support@t-shirtat.com, again demanding that Defendant
4 stop infringing Trader Joe's intellectual property. Eberhart Decl. ¶ 15, Ex. J.
5 Defendant never responded to this demand, but the email from Trader Joe's did not
6 result in a bounce-back message or other indication that it had not been delivered.
7 *Id.*

8 On April 21, 2022, Trader Joe's sent another cease and desist letter to
9 Defendant via email at support@t-shirtat.com, again demanding Defendant stop
10 infringing Trader Joe's intellectual property with regard to additional product
11 designs on the Website. Eberhart Decl. ¶ 16, Exs. K, L. Defendant never responded
12 to this demand; again, however, there was no bounce-back message or other
13 indication that Trader Joe's email had not been delivered. *Id.*

14 On September 13, 2022, Trader Joe's sent another cease and desist letter to
15 Defendant via email at support@t-shirtat.com, again demanding Defendant stop
16 infringing Trader Joe's intellectual property. Eberhart Decl. ¶ 17, Exs. M, N. In this
17 demand, Trader Joe's enclosed a copy of the Complaint ultimately filed in this
18 action and stated that Trader Joe's would initiate litigation in federal court if
19 Defendant did not stop its unlawful conduct. *Id.* Defendant never responded to this
20 demand and, again, there was no indication that the email had not been delivered.
21 *Id.*

22 On or about October 11, 2022, Trader Joe's engaged a private investigator to
23 investigate Defendant and determine its authentic address for service of the
24 Complaint. Eberhart Decl. ¶ 18; Declaration of Margo Evashevski ("Evashevski
25 Decl.") ¶ 3. Trader Joe's directed the investigator to purchase an article of
26 Defendant's infringing merchandise from the Website. Eberhart Decl. ¶ 18;
27 Evashevski Decl. ¶ 4. Trader Joe's did so in an effort to ascertain Defendant's true
28 physical address by way of the infringing article's return shipping address, and to

1 establish direct communication with Defendant. Eberhart Decl. ¶ 18.

2 On October 12, 2022, the investigator purchased an infringing product from
3 Defendant. Evashevski Decl. ¶ 5, Ex. A. That same day, the investigator emailed
4 Defendant at support@t-shirtat.com, requesting to change the size of the ordered
5 product. *Id.* On October 13, 2022, Defendant emailed the investigator from
6 support@t-shirtat.com, confirming the investigator's order. *Id.* ¶ 6, Ex. A. Later on
7 October 13, 2022, Defendant emailed the investigator from support@t-shirtat.com
8 again, confirming the investigator's request to change the size of the ordered
9 product and updating the order. *Id.* On October 25, 2022, the investigator received
10 the infringing product from Defendant. *Id.* ¶ 7, Ex. B. The return address for this
11 product was 1915 S. Susan Street, Santa Ana, CA 92704. Evashevski Decl., Ex. B.

12 On December 15, 2022, the investigator purchased another infringing
13 product from Defendant. Evashevski Decl. ¶ 8, Ex. D. On December 18, 2022,
14 Defendant sent the investigator an email from support@t-shirtat.com, confirming
15 the investigator's order. *Id.* On December 27, 2023, the investigator received the
16 infringing product from Defendant. *Id.* ¶ 9, Ex. C. The return address for this
17 product was 4855 Alpine Road, Suite 190, Stafford, Texas 77477. Evashevski
18 Decl., Ex. C.

19 On December 31, 2022, having confirmed via the private investigator that
20 support@t-shirtat.com is Defendant's authentic email address, Trader Joe's sent
21 another cease and desist letter to Defendant via email at support@t-shirtat.com,
22 demanding again that Defendant stop infringing Trader Joe's intellectual property,
23 and enclosing another copy of the Complaint. Eberhart Decl. ¶ 19, Exs. O, P. This
24 email did not result in a bounce-back message or other indication that the email had
25 not been delivered. *Id.* ¶ 19.

26 On January 9, 2023, the investigator sent an email to Defendant at
27 support@t-shirtat.com, requesting information regarding product exchanges.
28 Evashevski Decl. ¶ 10, Ex. D. On January 10, 2023, Defendant responded to the

investigator from support@t-shirtat.com. *Id.*

On January 30, 2023, Defendant sent Trader Joe's an email from support@t-shirtat.com, acknowledging Trader Joe's claims of infringement set forth in Trader Joe's December 31, 2022, letter and enclosed Complaint, and stating that Defendant would remove the infringing products from the Website. Eberhart Decl. ¶ 20, Ex. Q.

However, Defendant did not remove the infringing products from the Website. Eberhart Decl. ¶ 21. As such, on April 20, 2023, Trader Joe's filed the instant lawsuit. Dkt. 1.

D. Trader Joe's Attempts to Effect Service on Defendant by Conventional Means

Trader Joe's has attempted to effect service of process on Defendant at all physical addresses that Trader Joe's has been able to identify as potentially affiliated with Defendant. All of those attempts have failed.

On or about May 2, 2023, Trader Joe's attempted to effect service of process on Defendant at the address identified on the Website: 909 County Rd 2216, Cleveland, TX 77327. Eberhart Decl. ¶ 22, Ex. R. Service at this address was unsuccessful. *Id.* This address belongs to a racing engine business that is unrelated to Defendant or its business. *Id.*; Declaration of Taylor Lastor ("Lastor Decl.") ¶¶ 3-6. According to the resident of this address, at least twenty other parties have attempted to serve Defendant with process at her address. Eberhart Decl., Ex. R; Lastor Decl. ¶ 7.¹ The resident of this address has also received return orders of products purchased on the Website because Defendant advertises her address as Defendant's own address on the Website. Eberhart Decl., Ex. R; Lastor Decl.

¹ At least one other case in this District involved the attempted service of process on Defendant at this address due to Defendant's untruthful identification of this address on the Website. *See Patagonia, Inc. v. T-Shirt AT Fashion LLC, et al.*, No. 22-cv-07404-PA-MRW, Dkt. 15 at 3-4 (Jan. 27, 2023).

¶¶ 7-8. The resident of this address has been inundated for years with people and businesses attempting to contact Defendant at her address, and she has been unable to make it stop. Eberhart Decl., Ex. R; Lastor Decl. ¶ 9.

On or about May 2, 2023, Trader Joe's attempted to effect service of process on Defendant at an address identified on one of the Alias Websites as belonging to Defendant: 1005 County Rd 2216, Cleveland, TX 77327. Eberhart Decl. ¶ 22, Ex. R. Service at this address was unsuccessful. *Id.* According to the process server, this address is a mobile home that appears to be abandoned, and there was no indication that any company is located there. *Id.*

On or about May 2, 2023, Trader Joe's attempted to effect service of process on Defendant at the return addresses from one of the investigator's purchases of Defendant's merchandise: 4855 Alpine Rd, Ste. 190, Stafford, TX 77477. Eberhart Decl. ¶ 22, Ex. R. Service at this address was unsuccessful. *Id.* According to the process server, this address is a business called "Pmgoa," and the business owners are not Defendant and are not associated with Defendant. Eberhart Decl., Ex. R.

On or about May 12, 2023, Trader Joe's attempted to effect service of process on Defendant at the return address from the investigator's other purchase of Defendant's merchandise: 1915 S. Susan Street, Santa Ana, CA 92704. Eberhart Decl. ¶ 23, Ex. S. Service at this address was unsuccessful. *Id.* According to the process server, the tenants of this address did not know who Defendant is and have never heard of Defendant. *Id.*

Trader Joe's current deadline to effect service of the summons and Complaint on Defendant by ordinary means is July 19, 2023. Fed. R. Civ. P. 4(m).

On July 7, 2023, the Court issued an Order to Show Cause why this action should not be dismissed for lack of prosecution. Dkt. 11.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 4(e)(1) provides that "an individual ... may be served in a judicial district of the United States by: following state law for

1 serving a summons in an action brought in courts of general jurisdiction in the state
 2 where the district court is located or where service is made.” Fed. R. Civ. P. 4(e)(1).
 3 Because this Court is located in California, it may authorize service of process in
 4 conformity with California law. Section 413.30 of the California Code of Civil
 5 Procedure provides that “[w]here no provision is made in this chapter or other law
 6 for the service of summons, the court in which the action is pending may direct that
 7 summons be served in a manner which is reasonably calculated to give actual notice
 8 to the party to be served and that proof of such service be made as prescribed by the
 9 court.” Cal. Civ. Proc. Code § 413.30.

10 Under both federal and California rules, alternative service must comport
 11 with constitutional due process. *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d
 12 1007, 1016 (9th Cir. 2002). “To meet this requirement, the method of service
 13 crafted by the district court must be ‘reasonably calculated, under all the
 14 circumstances, to apprise interested parties of the pendency of the action and afford
 15 them an opportunity to present their objections.’” *Id.* at 1016–17 (quoting *Mullane*
 16 *v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). Courts in the Ninth
 17 Circuit permit email service for defendants within the United States pursuant to
 18 Section 413.30 in circumstances “where email service ‘is reasonably calculated to
 19 give actual notice to the party to be served,’ particularly where there is evidence
 20 that the defendant is evading service.” *Gnathonic, LLC v. Dingman*, No.
 21 219CV01502VAPSSX, 2019 WL 13166751, at *1 (C.D. Cal. Oct. 2, 2019); *Cisco*
 22 *Sys., Inc. v. Shaitor*, No. 18-CV-00480-LB, 2018 WL 3109398, at *3 (N.D. Cal.
 23 June 25, 2018) (collecting cases).

24 A timely motion or *ex parte* application to serve a defendant by alternative
 25 means is sufficient to discharge an order to show cause why an action should not be
 26 dismissed for lack of prosecution. *Patagonia, Inc. v. Krantz*, No.
 27 CV222827FMOMAAX, 2022 WL 17224651, at *1 (C.D. Cal. Aug. 10, 2022)
 28 (discharging order to show cause and authorizing email service); *cf. Wells Fargo*

1 *Bank, N.A. v. Ninesquare Cap. Partners, LLC*, No. 222CV01277FWSASX, 2022
 2 WL 17370535, at *6 (C.D. Cal. Oct. 5, 2022) (“As an option, Plaintiff may
 3 discharge the order to show cause by filing a renewed motion for alternative service
 4 as to Defendant Ninesquare Capital Partners that demonstrates reasonable diligence
 5 under [the alternative service statutes].”).

6 **IV. ARGUMENT**

7 To determine whether the Court should allow alternative service by email,
 8 the Court must determine that: (1) “the plaintiff demonstrated reasonable diligence
 9 in its attempts to serve the defendants”; and (2) “service by email is reasonably
 10 calculated to give actual notice to the defendants.” *Gnathonic*, 2019 WL 13166751,
 11 at *1; *see also Miller v. Ceres Unified Sch. Dist.*, No. 1:15-CV-0029-BAM, 2016
 12 WL 4702754, at *4 (E.D. Cal. Sept. 7, 2016) (permitting email service where
 13 “Plaintiff has adequately demonstrated that he has taken several reasonable steps to
 14 effect service upon Defendant” but that, “[d]espite reasonable diligence, process
 15 cannot be served on Defendant ... at her addresses of record,” and where “the email
 16 address [plaintiff] proposes to use for service will reasonably give [defendant]
 17 adequate notice”); *Steve McCurry Studios, LLC v. Web2Web Mktg., Inc.*, No. C 13-
 18 80246-WHA, 2014 WL 1877547, at *2 (N.D. Cal. May 9, 2014) (permitting service
 19 by email where plaintiff made “reasonable effort to personally serve defendant” and
 20 “service by e-mail ... ‘is reasonably calculated to give actual notice’ to defendant”) (quoting Cal. Civ. Proc. Code § 413.30)). Because Trader Joe’s has demonstrated
 21 reasonable diligence in its attempts to serve Defendant, and because email is the
 22 method most likely to apprise Defendant of this action, authorizing service on
 23 Defendant by email is appropriate here.

25 **A. Trader Joe’s Has “Demonstrated Reasonable Diligence” in Its** 26 **Attempts to Serve Defendant by Conventional Means**

27 Reasonable diligence entails “a thorough, systematic investigation and
 28 inquiry conducted in good faith by the party or the party’s agent or attorney.”

1 *Dusenbery v. United States*, 534 U.S. 161, 162 (2002); *see also Watts v. Crawford*,
 2 10 Cal. 4th 743, 749 n.5 (1995). Courts have found that good faith generally
 3 involves a number of honest attempts to learn defendant's whereabouts or their
 4 address and requires more than a single attempt to effectuate service. *Gnathonic*,
 5 2019 WL 13166751, at *3 (citing cases). Hiring a private investigator to ascertain
 6 addresses for the defendant, and then attempting to serve the defendant at those
 7 addresses, constitutes reasonable diligence. *Id.* at *3; *Aevoe Corp. v. Pace*, No. C
 8 11-3215 MEJ, 2011 WL 3904133, at *2 (N.D. Cal. Sept. 6, 2011); *E.L.V.H. Inc. v.*
 9 *Bennett*, No. 218CV00710ODWPLA, 2018 WL 6131947, at *2 (C.D. Cal. May 2,
 10 2018) (applying analogous New York state service statute and authorizing email
 11 service).

12 *Gnathonic* and *Aevoe* are on point. In *Gnathonic*, the plaintiff engaged a
 13 private investigator to determine an address to serve process on the defendant. 2019
 14 WL 13166751, at *3. The investigator obtained several likely addresses through her
 15 investigation, and the plaintiff unsuccessfully attempted to serve the defendant at
 16 each of them. *Id.* On the plaintiff's motion to authorize service on the defendant by
 17 email, the court held the plaintiff's investigation and service attempts constituted
 18 reasonable diligence and granted the motion. *Id.* at *4.

19 Similarly, in *Aevoe*, the plaintiff had engaged a private investigator and
 20 process server to ascertain the defendant's whereabouts, and the plaintiff then
 21 attempted to serve the defendant by personal and substitute service at several
 22 addresses. 2011 WL 3904133, at *2. Although none of the plaintiff's service efforts
 23 were successful, the court held that they constituted reasonable diligence to locate
 24 the defendant and authorized the plaintiff to serve the defendant by email and
 25 publication. *Id.*

26 Here, like the plaintiffs in *Gnathonic* and *Aevoe*, Trader Joe's retained a
 27 private investigator whose investigation yielded several likely addresses for service
 28 on Defendant. Eberhart Decl. ¶ 18; *see also, generally*, Evashevski Decl. And, as in

1 *Gnathonic* and *Aevoe*, Trader Joe’s attempted to serve Defendant at all of these
 2 addresses. Eberhart Decl. ¶¶ 22-23. Thus, this Court should conclude that Trader
 3 Joe’s efforts are reasonably diligent for purposes of Section 413.30 and authorize
 4 Trader Joe’s to serve Defendant by email.

5 **B. Service by Email Is “Reasonably Calculated to Provide Actual**
 6 **Notice” to Defendant**

7 To comport with due process, alternate service of process must be
 8 “reasonably calculated to apprise interested parties of the pendency of the action
 9 and afford them an opportunity to present their objections.” *Rio Props.*, 284 F.3d at
 10 1016. Courts in this District routinely grant requests to effect service by email on
 11 domestic defendants where, as here, the defendant: (1) does business on the
 12 internet; (2) relies on electronic communications to operate its business; (3) does
 13 not provide a physical address, or provides a physical address that is unsuitable for
 14 service; (4) has already communicated with the plaintiff by email; and/or (5) evades
 15 personal service or makes personal service difficult. *See, e.g., Gnathonic*, 2019 WL
 16 13166751, at *4; *Rio Props.*, 284 F.3d at 1017 (concluding that service of process
 17 by e-mail was not only proper, but also “the method of service most likely to reach”
 18 defendant, where defendant “structured its business such that it could be contacted
 19 only via its email address”); *Facebook, Inc. v. Banana Ads, LLC*, No. C-11-3619
 20 YGR, 2012 WL 1038752, at *3 (N.D. Cal. Mar. 27, 2012) (holding “service by
 21 email would be the best method for providing actual notice” to domestic defendants
 22 who “are all engaged in internet-based commercial activities and rely on email as a
 23 means of communication”); *Kohler Co. v. Domainjet, Inc.*, No. 11-CV-1767-BEN
 24 MDD, 2012 WL 716883, at *2 (S.D. Cal. Mar. 5, 2012) (finding that “service by e-
 25 mail will be reasonably calculated to give actual notice to Defendants” where
 26 plaintiffs had unsuccessfully attempted service at three physical addresses and had
 27 communicated with the defendant in the past using the email address); *Creative*
 28 *Intellects v. Haygood*, No. 221CV02670RGKAFM, 2021 WL 3568237, at *3 (C.D.

Cal. July 23, 2021) (authorizing service by email and noting that “while courts look skeptically on service via a periodical because it is unlikely to result in actual notice, they routinely allow service by email”) (citing cases). For example, in *Gnathonic*, the plaintiff’s counsel sent the defendant an email and attached a copy of the complaint in the action. 2019 WL 13166751, at *4. The defendant responded to that email and acknowledged the plaintiff’s claims. *Id.* The court determined that these communications provided sufficient evidence that the defendant was monitoring his email address and had received actual notice of the dispute. *Id.* Thus, pursuant to Section 413.30, it authorized service of the complaint on defendant by email to that email address. *Id.*

Similarly, in *Creative Intellectuals*, the plaintiff’s counsel sent multiple emails to the defendant, one of which included a copy of the complaint in the action. 2021 WL 3568237, at *2. None of these emails resulted in “bounce back” messages. *Id.* The defendant later admitted that he had received an email from the plaintiff’s counsel, but he refused to provide the plaintiff with his address or consent to email service. *Id.* Because none of the plaintiff’s emails received a “bounce back” message, and because the plaintiff admitted he had received one of these emails, the court concluded that email was “the most effective way” to reach the defendant, and it granted the plaintiff’s motion for alternative service. *Id.* at *4.

Here, like *Gnathonic* and *Creative Intellectuals*, Trader Joe’s has corresponded with Defendant via email and sent Defendant a copy of the Complaint in this action via email. Eberhart Decl. ¶¶ 17-19, Exs. M-P. Furthermore, service is reasonably calculated to provide actual notice to Defendant because Defendant has used email to acknowledge receipt of Trader Joe’s Complaint and to respond to Trader Joe’s. *Id.* ¶ 20, Ex. Q. *See Gnathonic*, 2019 WL 13166751, at *4 (“Plaintiff has also shown that service by email is reasonably calculated to give Defendant notice—indeed, Plaintiff has shown that Defendant has *actual* notice of the action, and that he received such notice via email.”). And like the situation in *Creative Intellectuals*,

1 none of Trader Joe's other emails to Defendant at support@t-shirtat.com resulted in
2 "bounce back" messages or any other indication that those emails were not
3 delivered, which further indicates that support@t-shirtat.com is Defendant's valid
4 email address. 2021 WL 3568237, at *3. The fact that Trader Joe's private
5 investigator has communicated with Defendant multiple times at support@t-shirtat.com
6 even further supports the conclusion that Defendant monitors this email
7 address and that it is the most effective way to reach Defendant. *See* Evashevski
8 Decl. ¶¶ 6-10, Exs. A, D; *see also* *E.L.V.H. Inc.*, 2018 WL 6131947, at *2
9 ("Plaintiffs have demonstrated a high likelihood that [the defendant] will receive
10 and respond to emails sent to the proposed email address. Service by email alone,
11 therefore, comports with due process."). For these reasons, Trader Joe's has
12 demonstrated that service by email is reasonably calculated to provide actual notice
13 to Defendant, and the Court should grant this Motion.

14 **V. CONCLUSION**

15 Trader Joe's has been unable to serve Defendant despite diligent and
16 substantial efforts to ascertain a suitable address for service by conventional means.
17 Defendant's evasiveness has interfered with the progress of this litigation and
18 imposed substantial costs on Trader Joe's. Trader Joe's has already communicated
19 with Defendant at support@t-shirtat.com through counsel and a private
20 investigator, and Defendant has received and acknowledged a copy of Trader Joe's
21 Complaint sent to that email address. Thus, email communication to support@t-shirtat.com
22 is the means most reasonably calculated to apprise Defendant of the
23 action and afford it an opportunity to respond. Courts in this District routinely
24 authorize email service upon defendants in this circumstance, and this constitutes
25 good cause to not dismiss this action for lack of prosecution. For the foregoing
26 reasons, Trader Joe's respectfully requests this Court not dismiss this action for
27 lack of prosecution, grant this motion for service by alternative means and authorize
28 Trader Joe's to serve the summons and Complaint on Defendant by email to

1 support@t-shirtat.com, and grant a reasonable extension of the deadline to
2 complete such service.

3
4 Dated: July 13, 2023

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